IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

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HON. STEVEN H. RODDA, JUDGE, DEPARTMENT 44/1

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LAURENCE LUCIER and LAURIE LUCIER, Plaintiffs,

-vs- No. 02AS01909

PHILIP MORRIS INCORPORATED, and, R.J. REYNOLDS TOBACCO COMPANY Defendants.

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REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS AT JURY TRIAL

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THURSDAY, DECEMBER 19, 2002

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THURSDAY, DECEMBER 19, 2002
(Morning Session)
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The matter of LAURENCE LUCIER and LAURIE LUCIER, et al, Plaintiffs, versus PHILIP MORRIS INCORPORATED, et al., Defendants, Case No. 02AS01909, came on regularly this day before the Honorable Steven H. Rodda, Judge of the Superior Court of the State of California, for the County of Sacramento, Department 44/1 at 10:15 o'clock a.m.

The Plaintiffs, LAURENCE LUCIER and LAURIE LUCIER, were represented by: GARY M. PAUL, Attorney at Law; MARY ALEXANDER, Attorney at Law; and ROBERT M. BROWN, Attorney at Law.

The Defendant PHILIP MORRIS INCORPORATED was represented by: GERALD V. BARRON, Attorney at Law; STEPHANIE A. SCHRANDT, Attorney at Law; DEBORAH A. SMITH, Attorney at Law; and ANNIE Y.S. CHUANG, Attorney at Law.

The Defendant R.J. REYNOLDS TOBACCO COMPANY was represented by: THEODORE M. GROSSMAN, Attorney at Law; HAROLD K. GORDON, Attorney at Law; ELIZABETH P. KESSLER, Attorney at Law; DANIEL J. McLOON, Attorney at Law, and STEVEN N. GEISE, Attorney at Law.

The following proceedings were then had:

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THE COURT: Good morning.

(All say "good morning.")

THE COURT: Okay, ready to go, are we?

MS. ALEXANDER: Yes.

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THE COURT: Bring the jury in, please.

(The jurors are brought in at 10:15 am.)

THE COURT: Good morning.

(All say "good morning.")

THE COURT: Okay, ready?

MS. ALEXANDER: Yes your Honor.

THE COURT: Okay,

MS. ALEXANDER: Good morning, everyone.

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(All say "good morning.")
MS. ALEXANDER: Your Honor, the plaintiffs call Laurie Lucier.
THE COURT: All right.
THE CLERK: Please take the witness stand.
Raise your right hand.
Do you solemnly swear testimony that you shall give will be the truth, the whole truth and nothing but the truth, so help you God?
THE WITNESS: Yes, I do.
THE CLERK: Please be seated.
Please state your name and spell it for the record.
THE WITNESS: Laurie, L-A-U-R-I-E, Lucier, L-U-C-I-E-R.

TESTIMONY OF

LAURIE LUCIER, a Plaintiff called by the Plaintiffs:

DIRECT EXAMINATION

BY MS. ALEXANDER, Counsel for the Plaintiff:

Q. Mrs. Lucier, you're married to Larry Lucier?
A. Yes, I am.

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Q. And how old are you?
A. I'm 50.
Q. And what do you do?
A. I am a real estate agent, and I'm also a lawyer.
Q. And do you have a child, you and Larry?
A. Yes, we do.
Q. Remind us of her name and age, please.
A. Elaine Marie, and she's six years old.
Q. And where were you born and raised?
A. I was born and raised in San Francisco, California.
Q. When you and Mr. -- Larry were married and Elaine came along, what kinds of things did you used to do as a family before Larry was diagnosed?
A. We loved to travel together. Elaine was a frequent flier. We loved to visit with family and friends, go to the park. We used to take her to movies and museums; we went to church together.
We played in our yard and at our home, and read books to her, played games with her.
MS. ALEXANDER: Am I --
THE COURT: We may need to --
THE WITNESS: Microphone?
THE COURT ATTENDANT: Yes.
THE WITNESS: I'm sorry.
MS. ALEXANDER: Our technical assistant.
THE WITNESS: You let me know if that works okay?
Is that better?
MS. ALEXANDER: Much better, yes.

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THE WITNESS: Okay.
Q. BY MS. ALEXANDER: When you and Larry were married, was he a smoker?
A. Yes, he was.
Q. And were you a smoker?
A. Yes, I was.
Q. And did there come a time when Larry tried to quit?
A. Yes.
Q. And can you tell us about the first time.
A. The first time was about in 1997. It was not too long after our daughter was born.
Q. And how did he try to quit?
A. He used the patches. And the Nicorette gum.

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Q. Did it work?
A. No.
Q. Did he try?
A. Yes, he did.
Q. And what's the next time that he tried to quit?
A. Approximately a year later, in 1998.
Q. And can you tell us the circumstances surrounding when he tried to quit in '98.
A. He again tried the patches, and the gum.
Q. And we heard that he tried hypnosis; do you remember that?
A. Yes.
Q. What were the circumstances then?
A. He stated to me that he wanted to quit, and he asked if I would join him in going to a hypnotist to try to quit.

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Q. And it was his idea to go to the hypnotist?
A. Yes.
Q. And did you go with him?
A. Well, we went the same day but at different times. We had different appointments.
Q. About when was that?
A. It was November 25th, 1998. It was our anniversary.
Q. It was an anniversary thing --
A. It was anniversary gift to ourselves.
Q. November, 1998. And what was the date of his diagnosis with lung cancer?
A. Middle of June, 1999, I think the 15th.
Q. When you went to the -- After you went to the hypnosis -- Hypnotist, were you able to, you yourself, able to quit smoking?
A. Yes.
Q. And did you think that Larry had quit as well?
A. I did.
Q. And did it come to your attention at some point that he had not been able to quit, with the hypnotist?
A. Yes.
Q. Did you -- Can you tell us about that.
A. It was about the time that he was diagnosed. I discovered a pack of cigarettes in a pocket.
Q. And did you face him with that?
A. No, I didn't.
Q. Why not?
A. Well, I had suspected that he had gone back to

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smoking, but I -- I felt bad. I didn't want to embarrass him. And I thought if he didn't know I knew, he would continue trying to quit.
Q. And when he was trying to quit, what was your observation? Did you believe that he was really trying to quit?
A. I did.
Q. From time to time, did you talk to him about the potential health effects of smoking?
A. In general, yes, we did.
Q. And was that part of the reason why he went to the hypnotist with you?
A. Yes.
Q. Did you have some idea -- Well, let me go back to -- After he was diagnosed with lung cancer, did he go back to smoking?
A. Yes.
Q. Did you talk to him about that?

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A. Yes, I did.
Q. What was it that he told you, if anything, about why he hadn't told you that he had gone back to smoking?
A. He felt very bad about it. He didn't want me to know. He -- Kept wanting to quit. He thought he could keep trying.
Q. Did you believe him?
A. Yes, I did.
Q. When he would go to the doctor for his appointments, during and after he was diagnosed, did you go with him?

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Would you be there?
A. Most of the times, yes.
Q. And when you were aware that he was smoking after he was diagnosed, does he still smoke now?
A. Yes, he does.
Q. Do you like that?
A. No.
Q. Do you tell him that you don't like it?
A. Yes.
Q. Do you -- Could you tell us what your observations were and are when he tried to quit smoking?
A. (No Response)
Q. What did you notice about him?
A. He becomes extremely irritable, extremely tense. You can see the tension in his face; you can feel it viscerally that he's struggling, he can't sleep well. He can't concentrate. He just becomes -- A nightmare to be with.
Q. Does he still use patches?
A. Yes, he does.
Q. Has he been using patches during the trial?
A. Yes, he has.
Q. Do you believe he's addicted to cigarettes?
A. I most definitely do.
MR. GROSSMAN: Objection, your Honor; calls for opinion.
THE COURT: Sustained.
MS. ALEXANDER: Goes to state of mind, your Honor.
Q. BY MS. ALEXANDER: From your observations of what

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you've seen of Larry, from your observations, do you think that he's addicted?
A. Yes, I do.
MR. GROSSMAN: Could we approach the bench for a moment.
THE COURT: Yes.
(At Bench)
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THE COURT: Okay.
MR. GROSSMAN: Your Honor, this calls for a medical diagnosis of addiction. It's different from saying he's having a hard time stopping, or something like that, which would be a layman's opinion. Addiction is not -- Is -- Medical evidence has been offered in this case. If it were within the layman's scope, then it wouldn't be necessary for plaintiff to offer expert opinion.
MS. ALEXANDER: It's like saying that someone has an alcohol problem. This is her observation, her state of mind of what she sees with her husband, and that's part of --
THE COURT: Well, is that state of mind relevant?
There is a claim for loss of consortium. Is that part of that issue?
MS. ALEXANDER: It's part of her damages, and it's

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part of her damages too, that she has to watch his struggle.
THE COURT: I'm going to sustain the form of the question. You can ask her to testify about her observations, but under the circumstances, I think this requires expert opinion testimony.

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MS. ALEXANDER: All right, your Honor.

(Back In Open Court)

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Q. BY MS. ALEXANDER: You are Larry's wife. Do you believe that he cannot stop smoking?
A. I do believe that.
Q. I'd like to go back with you to 1999. Did there come a time when there was -- The doctors found a spot in the x-ray on his lung?
A. Yes.
Q. And did he then go in for further tests?
A. Yes.
Q. Were you there when you found out that he really did have lung cancer?
A. Yes.
Q. Where were you?
A. Near the waiting room, in the hospital.
Q. And what happened?
A. I -- Saw a doctor come from wherever, wearing surgical clothes, and he came up to me and said, "Are you Mrs. Lucier?" And I said "yes".
And he said, "Your husband was a smoker, wasn't he?" And I said "yes".
And he says, "Your husband has lung cancer."
Q. And what was your reaction?
A. I just felt like the wind was knocked right out of me.
Q. Did you and Larry then prepare for death?

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A. Yes, we did.
Q. And what did you do?
A. Larry started packing up all of his favorite things to give to his brothers and his sisters. He started writing a letter to his daughter, and then he wanted to -- For me to give her when he died.
We talked about -- Sorry.
(Witness being tearful)
Q. Now at some point you moved to Arizona?
A. Yes, we did.
Q. And were there any family members in Arizona?
A. Yes, there were.
Q. Who was there?
A. Six of his brothers and sisters were there.
Q. Six of them?
A. Yes.
Q. And in Arizona, did his treatment continue?
A. Yes.
Q. When you were at Arizona also, did he look for work?
A. After awhile, yes.
Q. And did he find a job?
A. Yes, he did.
Q. Did you receive when you were in Arizona good news about his cancer?
A. Yes.
Q. What was that?
A. After he had completed the treatment, he had another test, and the -- They said that they couldn't find any

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detectable cancer at that time.
Q. And after you got the good news that they had not found any detectable cancer, what was the next thing your family did?
A. Well, that's when Larry went to take the job. He started working.
Q. And at some point did you move back to California?
A. Yes, we did.
Q. And then -- Where in California?
A. We came to Sacramento.
Q. Did he get a job here in Sacramento?
A. Yes, he did, after awhile.
Q. Doing what?
A. An accountant position.
Q. And then you heard that he was diagnosed with a brain tumor?
A. Yes. Yes.
Q. And when was that?
A. January of 2001.
Q. When you heard that the cancer had recurred in his brain, what was your reaction?
A. I thought this is it, that we've been lucky one time, but we weren't going to be again. I thought he was going to die.
Q. And in the -- In your situation at that time, Larry was working at the time?
A. Yeah.
Q. Could you tell us about, since then; did he go in for
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tests periodically?
A. Yes, he does.
Q. How often?
A. Every three or four months.
Q. And when he's going in for those tests every three months, how did that affect you and Larry?
A. Brings back all the bad things, and reminds me every time that this could be it. This could be the one. We -- We go into a mode of fear.
Q. You mean each time the test happens?
A. Yeah. Yeah.
Q. I'd like to talk to you about how Larry is different, if he is, now from the way he was before he had cancer.
Could you describe how he is different.
A. He's not the same. He's -- Had been vibrant and energetic and able to do lots of things. And now he -- His memory is bad. He's not mentally sharp anymore. He's weak; he tires easily. He just can't do the things he used to do.
Q. Can you give us some examples of his difficulty with memory.
A. Well, for example, he'll try to help my daughter do her homework, and sometimes she is better at it -- He can't follow the directions. I have to remind him three or four times of simple things. He asks me every day what day is it? He doesn't know. He can't follow things like that.
Q. Any -- You said that there's some physical differences, and he's weak. Can you give us some examples?
A. Well, we used to enjoy going out for long walks. He
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can't do it. It's sad. I'm walking, and I'm constantly stopping for him.
We used to like to march around. I'm just waiting for him. He can't keep up. We can't do those things.

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He can't carry Elaine around and play with her.
He tries to do things, like yard work, and he -- He goes maybe one push of the mower and has to stop. And I've seen him do that. And I try to tell him, you don't have to do that. But he wants to keep trying.
Q. How has the cancer affected your relationship with him?
A. Well, I feel I've lost my partner, that we were equal, that we had -- The same goals and abilities and strengths and we were working together for a future. And now I feel sometimes that he's just unable to -- To do those things. And in a way he's somewhat like having another child.
Q. Has the cancer that he has changed the relationship with you and your family with your daughter?
A. With my Daughter Elaine? I'm sorry?
Q. How has it affected you in your family life?
A. There is, I think, a sense that Larry wants to bond very strongly with Elaine. But there's the other side of him that he doesn't know if he's going to go around for her to grow up. And, you know, how close can you get?
So I think sometimes he feels that, well, can I get that close to her? Or am I just going to hurt her more? If I don't survive.

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Q. Are there times when you're scared?
A. Yes, yes.
Q. Are there any other examples that you can give us of how it's affected your relationship with Larry --
A. Well, we don't plan for the future. We can't decide things like, well, you know, shall we take a long trip next summer? We don't do that. We do things on very short notice.
If it looks like Larry's in good health, we'll take a small trip, or he'll go on a small trip. But everything is geared around his past and his health.
MS. ALEXANDER: No further questions at this time, your Honor.
THE COURT: Mr. Grossman.
MR. GROSSMAN: Thank you, your Honor.
Good morning, Mrs. Lucier.
THE WITNESS: Good morning.

CROSS EXAMINATION

BY MR. GROSSMAN, Counsel for the Defendant RJ Reynolds:
Q. I have a few questions.
Just going to ask you about yours and your husband's role in the lawsuit and about your husband's smoking.
You're a lawyer; is that right?
A. Yes.
Q. And you've done trial work for approximately 20 years?
A. No.
Q. Eighteen years, you said?

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A. I'm not sure what you mean by "trial work". This kind of trial work, no. But some trial work, yes.
Q. Trial work.
You've done some insurance-fraud cases that you were involved in?
A. I've never done a trial on insurance fraud, no.
Q. What kind of trials did you do?
A. I was a landlord/tenant attorney and did do some short-cause landlord/tenant cases.

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Q. And before bringing the lawsuit, you pointed out to Larry the names of some firms that he might want to contact --
A. Yes.
Q. -- Do you recall that?
And you reviewed some transcript testimony from other tobacco cases?
A. No, that's not correct.
Q. Well, you said that you had -- At your deposition that you had reviewed transcripts from a case called Boeken?
A. That happened after we filed our lawsuit.
Q. You found them on the Internet?
A. That's correct.
Q. Now, you and your husband are both plaintiffs?
A. Correct.
Q. And your husband does most of the communication with your attorneys in this case? Is that right?
A. Correct.
Q. He follows the case developments more carefully than

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you do?
A. That's correct.
Q. And he's met with counsel more often?
A. That's correct.
Q. You trust Larry to take the lead in the family in working on this case?
A. To -- Yes. To the most extent, yes.
Q. And you believe he's competent to do so?
A. For what he does, yes.
Q. Now, let's go back to the time when you went to that hypnotist in 1998.
A. Okay.
Q. I guess different things are motivating to different people. But you said that one of the things that motivated you to stop smoking was that you were really opposed to a new tax on cigarettes that Rob Reiner was proposing?
A. I remember that, yes. I remember that, yes.
Q. And you didn't want any of your money -- It was a proposal that the tax would go for money used for daycare centers and things like that. And one of the reasons that you wanted to quit was you didn't want to contribute anything to Mr. Reiner's program?
A. I didn't want the money to be used for something other than people being helped to quit smoking; that's correct.
Q. Now, when you and Larry went to the hypnotist in 1998, you saw him smoke cigarette that evening?
A. Yes, I did.

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Q. And he told you that he had found that one cigarette in his pocket, and he was just finishing it up?
A. That's right.
Q. But from what you could observe, Larry did cut down very substantially after seeing the hypnotist, didn't he?
A. I thought he had quit altogether for at least several months.
Q. And in fact, you talked about it, didn't you?
A. I don't recall specifics of that.
Q. Well, he told you that he wasn't smoking?
A. That's right.
Q. And after your husband saw the hypnotist in November of 1998, he never smoked in the house; is that correct?
A. He didn't smoke in the house.

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Q. And you never saw him smoking out on the porch; isn't that correct?
A. That's correct, um-hum.
Q. And you never saw him smoking in his car; is that correct?
A. That's correct.
Q. And after that one cigarette, the night after the hypnotist, you didn't see him smoke again anywhere for three months?
A. That's correct.
Q. When you -- When you found that he had smoked the cigarette again months later, you told him that you were disappointed, and you offered to have him go back to the hypnotist?

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A. Right. That was in May of 2001.
Q. And he said that he had just smoked a little once in awhile; is that correct?
A. I think so.
Q. Now, after he smoked that cigarette on the evening of November 25th, 1998, and you didn't see him smoke, you didn't smell any smoke on him, and you didn't have any sense that he smoked until months later; is that correct?
A. That's correct.
Q. If he was smoking, he was doing a good job of hiding it from you?
A. Well, I also think that my sinuses are all congested from having been a smoker, and I probably didn't have a very good sense of smell for a few months.
Q. But in fact if he was smoking, he was doing a pretty good job of hiding it?
A. He was doing a good job, that's true.
Q. Now, your deposition was taken in this case November of last year, which would have been three years after you went to the hypnotist?
A. Approximately.
Q. And in that three-year period, you had only seen him smoke two or three times; is that correct?
A. That's right.
Q. Last, I would just like to turn to your husband's diet.
A. Okay.
Q. You have a doctor named Dr. O'Neil whom you had seen

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at one time?
A. Yes.
Q. And you referred Larry to Dr. O'Neil at one point, about 1997?
A. Yes.
Q. Did Larry ever come back and say he wanted to go on a lower-cholesterol diet?
A. I don't recall that.
Q. Well, you would describe Larry's diet as a Midwestern diet?
A. That's true.
Q. Kind of a meat-and-potatoes diet?
A. Yes.
Q. And he doesn't have a really good sense, in your mind, of what's a healthy diet?
A. He's becoming better at it.
Q. But over time, at least, until recently --
A. Yes.
Q. -- He would prefer to have a steak or a burger than

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chicken or fish?
A. I would say, since we've been married, he has actually gone towards the fish and chicken more than the meat and potatoes. But there still may be a preference.
Q. I think you described his idea of a healthy diet as a steak and cottage cheese?
A. Probably.
MR. GROSSMAN: I have no further questions. Thank you very much.

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THE WITNESS: Thank you.
THE COURT: Mr. Barron.
MR. BARRON: Thank you, your Honor; I have no questions.
THE COURT: Okay. Miss Alexander.

REDIRECT EXAMINATION

BY MS. ALEXANDER, Counsel for the Plaintiff:
Q. Speaking of Dr. O'Neil, you weren't with him when Larry went to see Dr. O'Neil?
A. No, I wasn't.
Q. Do you recall that?
You recall that in 1997, two years before he was diagnosed with lung cancer, that he had had a low fever?
A. Yes, I remember that.
Q. And did you know that he went to see Dr. O'Neil for it?
A. Yes.
Q. And how long did that fever last?
A. A couple of weeks.
Q. Do you remember the fever went away in a couple weeks?
A. Yes.
Q. Now, do you recall Larry ever having night sweats?
A. At that time, yes.
Q. But the time that he had those fevers, the fever during those two weeks of 1997 --
A. Yes.
Q. -- Did the night sweats continue after the fever

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went away?
A. No.
Q. Did he have night sweats for two years?
A. No.
Q. Did he have a fever for two years?
A. No.
Q. That's all I have. Thank you.
THE COURT: Mr. Grossman.
MR. GROSSMAN: I have no further questions.
THE COURT: Mr. Barron.
MR. BARRON: I have no questions, your Honor.
THE COURT: You may step down. Thank you.
THE WITNESS: Thank you.
MR. PAUL: Your Honor, the plaintiffs are going to call Robert Johnson, I believe -- I'm hoping that he's out in the hallway. May I go check.
THE CLERK: Please take the witness stand.
Do you solemnly swear the testimony that you shall give will be the truth, the whole truth and nothing but truth, so help you God?
THE WITNESS: I do.
THE CLERK: Please be seated.
THE WITNESS: Thank you.
THE CLERK: Please state your nail and spell it for

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the record.
THE WITNESS: Sure. My name is Robert Johnson, J-O-H-N-S-O-N.
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TESTIMONY OF

ROBERT JOHNSON, a witness called by the Plaintiffs:

DIRECT EXAMINATION

BY MR. PAUL, Counsel for the Plaintiff:

Q. Good morning, Mr. Johnson. How are you?

A. Good morning, I'm doing pretty good. A little sniffles, but I'm okay.

Q. Okay, you'll be able to keep your voice up, won't you?

A. I should be. (Laughter)

Q. All right. Mr. Johnson, what do you do?

A. I am a forensic economist.

Q. Tell us what that means.

A. Sure.

Basically, a forensic economist is an economist that would use the standard techniques of economic analysis and statistics to assist the trier of the facts, either the jury or the Judge, when they go to place dollar value on various elements or parts of damages in a case.

For example, if I'm doing damages to a business, I'm talking about the loss of clients and the equipment and, of course, the lost profits.

When we talk about damages to an individual, though, we're primarily looking at the loss of earnings capacity. The amount of the future earnings, fringe benefits that they could have made over their working life, all reduced to present value.

Q. We'll talk about some of those terms in a second.

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Do you work for some company?

A. Have I my own company, Robert Johnson and Associates.

Q. And where is Robert Johnson and Associates located?

A. In the San Jose area.

Q. Thank you.

You've had occasion to testify, I would imagine, in a number of trials?

A. Yes, I have.

Q. Do you want to tell the Court and the jury how many trials you have testified in?

A. Probably several hundred over the past 20 years.

Q. Okay. You and I have worked together before, correct?

A. Yes, we have.

Q. And Miss Mary Alexander and you have worked together before?

A. Yes, we have.

Q. Would that be a true statement?

A. Yes.

Q. Okay. Let's talk a little bit about your academic background. Could you tell us where you went to college, what your degrees are, and when you got them?

A. Sure. I'm a graduate of Baruch College of the City University in New York; my major was economics.

I'm also a graduated of Stanford University's graduate school of business, with a major in finance and investments.

And I've had postgraduate training with the Strategic

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Planning Institute and the American Management Association, regarding strategic planning and mergers and acquisitions.
Q. When did you get your degree from Stanford University?
A. 1973.
Q. All right tell us a little bit about your work history. What involvement have you had from a work standpoint in the field of economics?
A. Well, when I started off, I first worked with the Firm of Donaldson Lufkin and Jenrette. They're an investment banking house on Wall Street. I was an analyst in what we call special situations, private placements. Our clients were primarily institutions: Bank of America, Wells Fargo, the California State Retirement System.

From there I went to work for American Express Investments Management Company in San Francisco. They were a mutual fund portfolio manager. They managed about $700,000,000.

I also worked for the division of the Singer Corporation, HRB Singer. Our division didn't do the sewing machines; we did the signal and various intelligence coordination for the Department of Defense.

And I was the head of mergers and acquisitions, through directing corporate acquisitions of strategic planning.

And I worked for F.M.C.'s defense division in San Jose, California, where I was director of capital budgeting and expenditures. It's a three-billion-dollar division

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probably best known for the Bradley Fighting machine in Desert Storm.

Since 1991, I've been using my academic training, using it in the real world of forensic economics.
Q. You use the term "economics". Economics is a pretty large field, isn't it?
A. Right.
Q. It's microeconomics and macroeconomics, and things like that, right?
A. Right.
Q. They're the ones who tell us if the economy's going to go up or down, right?
A. They try.
Q. Sometimes they're right, and sometimes they're wrong. Right?
A. Yes.
Q. In the analysis that we are going to be talking about in this case; economic analysis, is it a pretty straightforward analysis?
A. Yes. There's some very basic methodologies that are used by forensic economists to make the calculations that are sort of standard throughout the injury -- The industry -- Excuse me.
Q. Have you had occasion to write in the field,
A. Yes.
Q. Could you tell us about that.
A. I've had articles published in the American Bar Journ al, the American Journal for Trial Advocacy, Trial Magazine,

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and I've co-authored that for the Lawyers Coop, for Bancroft Whitney.
Q. And do you belong to any professional organizations?
A. Yes. I'm a member the American Economics Association, the Western Economics Association, and the

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National Association of Forensic Economists.
Q. And do you have any licenses?
A. Yes. I'm a licensed life and disability agent.
Q. Now, you've had occasion to then qualify as an expert in the field of economics in court before?
A. Yes. Many times.
Q. You said several hundred times. Can you tell us, give us some examples of matters or cases that you've been involved in where you've done the economic analysis as to the losses suffered by individuals. Or businesses.
A. Let's see.
There's the Kansas City Hyatt Regency collapse, United Flight 352, Pan Am Flight 103 over Lockerby, Scotland.
The M.G.M. Grand Hotel fire in Las Vegas, economic expert for Lloyds of London.
The collapse of the Cypress structure, which was the highway that collapsed during the 1989 earthquake during the World Series.
And the Exxon Valdez are probably some of the more prominent cases that we've done analysis on.
Q. So the kinds of analyses that you did in those cases are roughly the kind of analyses we're going to be talking

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about in the case?
A. Yes, they are.
Q. Okay. Now, have you qualified as an exert in states other than California?
A. Yes, I have.
Q. Give us some examples of other states you've qualified in?
A. Let's see. Alaska, Washington, Oregon, Hawaii, Idaho, Montana, North Dakota, South Dakota, Arizona, New Mexico, Texas, Indiana, Illinois, Ohio, Pennsylvania, New York, Maryland, Delaware, District of Columbia, North Carolina, Georgia, Florida --
Q. Okay, okay. (Laughter)
Tell us the ones you haven't testified in --
A. I would say out of the 50, I've been to about 40 of them.
Q. Okay. That's why I stopped you.
Now, I take it that you've had occasion to testify both in federal and state courts; would that be correct?
A. Yes, I have.
Q. Now, obviously, Miss Alexander and I represent the plaintiff in this lawsuit.
A. Yes.
Q. You've testified for, on behalf of plaintiffs before?
A. Yes, I have.
Q. Have you also testified on behalf of defendants in lawsuits, in economic analysis?
A. Yes, I have.

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Q. Okay. Now, do all the cases that you work on end up going to trial?
A. Thanks goodness, less than ten percent of them wind up at this stage. About 90-plus percent of them settle out.
Q. So I take it, even though you may have testified in court several hundred times, there are ten times that number of cases that you've actually been involved in; would that be correct?
A. Oh, sure.
Q. Okay. And what percentage of your cases would be

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analysis of personal injury, as we use that term for this kind of case -- Is that correct?
A. Yes.
Q. You're familiar with that term?
A. Yes, I am.
Q. What percentage of your cases are personal injury cases where you're involved in evaluating the losses that have been suffered by plaintiff?
A. Oh, about a third, to 40 percent.
Q. Okay. Now, in working up a case like this, where you're doing an economic analysis, what is the process that you, as a forensic economist, have to go through? What's important for you to obtain?
A. Well, when you're doing what we call an impaired-earnings capacity, loss-of-earnings-capacity analysis, the standards methodology is that you'll go and you'll get what we call the actuarial data, which is date of birth, date of injury, date of diagnosis, when they stopped work.

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You'll also get the information, specific to the individual, what they were making at the time, what was their profession? What were their goals in the future? How long were they going to work?
And basically what you are going to do is you take a number that represents what they were either making or going to be able to make, in gross dollars, and then you add to that their fringe benefits, because we have to calculate the total compensation.
The total compensation is two parts: Gross wages, plus whatever your employer contributes into your fringe-benefit package. Anything that you've contributed is already counted in the wages, so in order to get a total compensation, you have to add what the employer contributes to the welfare plan, into the retirement plan, into Social Security. That's part of what you earn plus your gross wages.
Then you'll take that figure, and you'll multiply that by the number of years they are going to spend or would have had the capacity to spend in the work force, what kind of work life.
And so you take total compensation times the number of years in the work force up to the date of retirement, and that will give you one figure.
That's had the injury never occurred; this is what their capacity would have been.
So you go back and you make a second calculation that says, now as a result of the injury, what are they capable

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of making? Gross wages, plus fringe benefits, fix your total compensation number, multiply that times the number of years in the work force, and that gives you your second, what we call result of the injury, total earnings.
You take that second number, you add the results, and you subtract that from the first number, as had it never occurred. The difference between the two numbers, that's the loss.
Q. Okay. You've used a term a couple times, and I want to talk to you about that term.
Did you use the term "capacity"?
A. Yes.
Q. In your field in your work as a forensic economist, what does that term mean, "capacity"?
A. Well, capacity basically means that -- How much in

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terms of work life, how long could that person have stayed in the work force?

So you're looking at, so to speak, not the early point they could retire, and you're not looking at how far could they work until they pass away, instead of passing away on the job? But you're looking at either a point where they said that they were going to retire.

In other words, if someone says I am going to retire at age 63, then you know that's their capacity.

If they say I was going to work as long as possible, unless they're an airline pilot, in which case they can't fly in the front end of the plane after age 62 -- Since everyone can work until they're no longer able to perform

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their job, since there's no longer a retirement age, you're looking at how long they are going to be in the work force, and also how much they are making.

So if you're looking at someone just starting out in the profession, the entry level of the work force, you don't assume that's all they are going to make for the rest their lives; you've got to assume there's a combination of progressions in the work force due to levels of skill, knowledge, experience, and so forth, so that their earnings level will continue to increase.

Basically we take a fairly scientific view in economics, where we talk about capacity. We talk about that point, the typical numbers that we utilize will be up to the point where the person had -- Collect their full benefit.

Most people may stop at that point in time. They could go beyond that, because there's no mandatory retirement age. But when you can collect your full Social Security benefits, that's what we use for capacity. But I like to call capacity like this cup. This is a -- I would say about 4-ounce cup.

Now, I have just poured about two ounces in there, because I didn't want to spill it. I could have poured six ounces in there, and it would have spilled over, and that would have been kind of like overtime or working on Sundays. But if you're asking me, is somebody injured, and I just crushed the cup, it's not the same; it will not maintain the same capacity that it had before.

When you're asked to compensate for the loss of

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earnings capacity, it's not the two ounces that I've put in; it's the four ounces that represented the capacity of the cup. So that's how we in economics look at this issue and elements of capacity.

Q. Thank you.

Now, is it necessary, when you're doing an analysis on someone like Mr. Lucier in this case, to meet him?

A. No, it's not necessary. In fact, in many of the cases, unfortunately, the people may be so profoundly injured -- We have people who are in a coma or quadriplegic and can't communicate. We can't talk to them and get any information. So what we do as economists, we go back and we look at specifically what they were making. We can look at their earnings history -- And see the profession they were in. We can also look up, thanks goodness, through the Internet now, we can look up specifically what that pay rate would be in the various -- Areas of employment.

So we can utilize all of that information. And so, no, we don't need to meet the individual.

Q. There are all kinds of tables maintained by the

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Government on interest rates and investment rates and work-life expectancies for various type of jobs, things of that sort?
A. That's correct. And there are private tables that are a little bit better than the government tables because they're updated and kept more relevant for what's happening today. Yes.
Q. And so would it be correct in this case that you were
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provided with certain information regarding Mr. Lucier, his earnings history, his -- What he did as an employee, and things of that sort? Would that be correct?
A. Yes, we did have access to that information. We had his Social Security records, which will list exactly how much the employer has paid them. So it's not a matter of what the person says they made. We can look to the Social Security records, and it will just detail what the person has been paid, over time.
Q. And by the way, in looking at the Social Security record --
MR. GROSSMAN: Your Honor, may we approach.
THE COURT: We'll take a ten-minute recess now. Please do not discuss the case.
(The jurors depart the courtroom at 11:00 am.)
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THE COURT: All right. Okay. The jury is gone.
MR. GROSSMAN: Thank you, your Honor.
The last question and answer poses a problem for defendants. We had sought the Social Security records; they were tendered to us briefly. We didn't have a chance to review them.
Plaintiffs demanded that any records of that kind be returned to them under seal.
We've never had an opportunity to review those records and, therefore, we can't cross-examine them.
MR. PAUL: I'm not introducing any records.
MR. GROSSMAN: The expert testimony is based upon
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facts that have not been made available to defendants. In fact, the plaintiffs demanded that we do not have.
THE COURT: You may step down, Mr. Johnson.
THE WITNESS: Okay.
MR. PAUL: Number one, I don't know what counsel is frankly talking about, to be honest with you. Whatever these conversations were, I don't know what the conversations are. I suppose if it's on the record at some deposition, he'll dig it out for me.
MR. GROSSMAN: We have a whole --
MR. PAUL: Excuse me just a second.
I mean --
THE COURT: Go ahead, Mr. Paul.
MR. PAUL: All he's going to testify about is what he made on his last job. He's going to expand on that as to what that is in the future; he's going to say that the man is disabled, which has been testified to already in this court.
THE COURT: Well, the information about his earnings and last job, which will be the basis of his opinion -- That will be provided independently?
MR. PAUL: Sure. Pay stubs.
MR. GROSSMAN: No, no. Just his testimony.
MR. PAUL: All they had to do was to have the employee get the records.

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MR. GROSSMAN: There was a claim of privilege made, and there's a series of correspondence on this.
MR. PAUL: They have records from his grade school.

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You can always get employee records.
THE COURT: You folks talk about this at the break. I'll take it up at the end of the break.
(The mid-morning recess was taken at 11:02 am.)
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